

§ 535.106

under other legal authority) that would otherwise be payable for the position.

(b) If critical position pay authority is granted for a position, the head of an agency may set pay initially at any amount up to the rate of pay for level II or level I of the Executive Schedule, as applicable, without further approval unless a higher maximum rate is approved by the President under § 535.104(c).

(c) The head of an agency may make subsequent adjustments in the rate of basic pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under section 5318 of title 5, United States Code. Such adjusted rates may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

(d) Employees receiving critical position pay are not entitled to locality-based comparability payments established under 5 U.S.C. 5304, special rate supplements under 5 U.S.C. 5305, or other similar payments or supplements under other legal authority.

(e) If an agency discontinues critical position pay for a given position (on its own initiative or because OPM, in consultation with OMB, terminates the authority under § 535.103(d)), the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency, unless the employee is eligible for a higher payable rate under the General Schedule maximum payable rate rule in § 531.221 and the agency chooses to apply that rule.

§ 535.106 Treatment as rate of basic pay.

A critical position pay rate is considered a rate of basic pay for all purposes, including any applicable premium pay, except—

(a) Application of any saved pay or pay retention provisions (e.g., 5 U.S.C. 5363); or

(b) Application of any adverse action provisions (e.g., 5 U.S.C. 7512).

§ 535.107 Annual reporting requirements.

(a) OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by January 31 of each year on their use of critical position pay authority for the previous calendar year:

(1) The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;

(2) The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;

(3) The beginning and ending dates of such rate(s) of basic pay, as applicable;

(4) The rate or rates of basic pay that would have been paid but for the grant of critical position pay. This includes what the rate or rates of basic pay were, or would have been, without critical position pay at the time critical position pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay authority had not been exercised; and

(5) Whether the authority is still needed for the critical position(s).

PART 536—GRADE AND PAY RETENTION

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